

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PATTI BINGHAM, CODY BINGHAM,

Plaintiffs,

v.

BLAIR LLC, BLAIR CORPORATION;
APPLESEEDS TOPCO, INC.; ORCHARD
BRANDS CORPORATION; ORCHARD
BRANDS TOPCO, LLC; CATALOG
HOLDINGS, LLC, SUSAN D. CARLSON,

Defendants.

Case No. C10-5005 RBL

ORDER GRANTING DEFENDANT
SUSAN CARLSON'S MOTION TO
DISMISS

This matter comes before the Court on Defendant Susan Carlson's Motion to Dismiss Plaintiffs' Complaint Pursuant to Fed. R. Civ. P. 12(b)(2) on the grounds that this Court lacks personal jurisdiction over this Defendant. The Court, having reviewed the motion, response and the record herein, is fully informed and **GRANTS** the motion for the reasons stated herein.

Introduction and Background

Plaintiffs filed the instant lawsuit seeking damages arising from an incident where an allegedly defective bathrobe caught fire resulting in injuries to Plaintiffs, Patti and Cody Bingham. Defendant Blair LLC allegedly manufactured and/or sold the robe in question and is allegedly liable to Plaintiffs for injuries sustained when the robe caught fire. Plaintiffs' eight count complaint purports to state a variety of claims against Defendant Blair, including claims for negligence,

1 breach of warranty, product liability, violation of the Federal Flammable Fabrics Act, bystander
2 liability, and intentional infliction of emotional distress. Plaintiffs also seek an award of punitive
3 damages.

4 Plaintiffs name Susan Blair individually as a defendant in this action. Ms. Carlson was
5 served with the lawsuit personally at her place of employment in Warren, Pennsylvania, where she
6 is employed by Blair LLC as a customer care specialist. Plaintiffs allege a single cause of action
7 against Ms. Carlson for “infliction of mental distress.” Plaintiffs allege that Susan Carlson “is an
8 employee of Blair whose designation is Customer Care Specialist” who at all times was “acting in
9 her capacity as employee of Blair and within the scope of her employment with Blair ...”

10 Plaintiffs’ claim states that Ms. Carlson had three telephone conversations with Plaintiff
11 Cody Bingham and that Ms. Carlson sent two letters to Plaintiff Patti Bingham. The only
12 allegations directed specifically against Ms. Carlson in regards to these contacts are:

13 “[w]hen Cody insisted to Susan Carlson that Blair take the robe off the market, Carlson
14 advised Cody that Blair would not take the robe off the market and even if they take it
15 from this market, they would sell it everywhere else in the world, thereby demeaning
Cody for his concerns and also denigrating his concern for others.”

16 Complaint, at # 52.

17 Defendant moves for dismissal of Plaintiffs’ complaint asserting that she had insufficient
18 contacts with the state of Washington for personal jurisdiction over Ms. Carlson.

19 **Due Process and Jurisdiction**

20 Where a defendant moves to dismiss a complaint for lack of personal jurisdiction, the
21 plaintiff bears the burden of demonstrating that jurisdiction is appropriate. Schwarzenegger v. Fred
22 Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004). Plaintiff cannot simply rest on the bare
23 allegations of its complaint, but rather is obligated to come forward with facts, by affidavit or
24 otherwise, supporting personal jurisdiction. Amba Marketing Systems, Inc. v. Jobar International,

1 Inc., 551 F.2d 784, 787 (9th Cir. 1977). Where, as here, the motion is based on written materials
2 rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of
3 jurisdictional facts. Schwarzenegger, at 800. Uncontroverted factual allegations must be taken as
4 true. Conflicts between parties over statements contained in affidavits must be resolved in the
5 plaintiff's favor. Id. A prima facie showing means that the plaintiff has produced admissible
6 evidence, which if believed, is sufficient to establish the existence of personal jurisdiction. Ballard
7 v. Savage, 65 F.3d 1495,1498 (9th Cir. 1995).

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9 Where no applicable federal statute addresses the issue, a court's personal jurisdiction
10 analysis begins with the “long-arm” statute of the state in which the court sits. Glencore Grain
11 Rotterdam B.V. v. Shivnath Rai Harnarain Co., 284 F.3d 1114, 1123 (9th Cir. 2002). Washington's
12 long-arm statute extends the court's personal jurisdiction to the broadest reach that the United States
13 Constitution permits. Byron Nelson Co. v. Orchard Management Corp. 95 Wn.App. 462, 465, 975
14 P.2d 555 (1999). Because Washington’s long-arm jurisdictional statute is coextensive with federal
15 due process requirements, the jurisdictional analysis under state law and federal due process are the
16 same. See, Schwarzenegger, at 800-01.

17 The Due Process Clause protects a defendant's liberty interest in not being subject to the
18 binding judgments of a forum with which she has established no meaningful contacts, ties or
19 relations. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-72 (1985). In determining whether
20 a defendant had minimum contacts with the forum state such that the exercise of jurisdiction over
21 the defendant would not offend the Due Process Clause, courts focus on the relationship among the
22 defendant, the forum, and the litigation. Shaffer v. Heitner, 433 U.S. 186, 204 (1977). If a court
23 determines that a defendant's contacts with the forum state are sufficient to satisfy the Due Process
24 Clause, then the court must exercise either “general” or “specific” jurisdiction over the defendant.
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1 The nature of the defendant's contacts with the forum state will determine whether the court's
2 jurisdiction is general or specific. Bancroft & Masters, Inc. v. Augusta Nat'l, Inc., 223 F.3d 1082,
3 1086 (9th Cir. 2000).

4 **Personal Jurisdiction**

5 Personal jurisdiction over employees or officers of a corporation in their individual
6 capacities must be based on their personal contacts with the forum state and not on the acts and
7 contacts carried out solely in a corporate capacity. Jurisdiction over an employee does not
8 automatically follow from jurisdiction over the corporation which employs him; nor does
9 jurisdiction over a parent corporation automatically establish jurisdiction over a wholly owned
10 subsidiary. Each defendant's contacts with the forum state must be assessed individually. Keeton
11 v. Hustler Magazine, Inc., 465 U.S. 770, 781 nt.3 (1984); Calder v. Jones, 465 U.S. 783, 790
12 (1984). A corporate officer who has contact with a forum only with regard to the performance of
13 his official duties is not subject to personal jurisdiction in that forum. Kransco Manufacturing, Inc.
14 v. Markwitz, 656 F.2d 1376, 1379 (9th Cir. 1981); Forsythe v. Overmyer, 576 F.2d 779, 782 (9th Cir.
15 1978). Further, a person generally acting as an agent on behalf of a corporation is not individually
16 subject to personal jurisdiction merely based on his actions in a corporate capacity. TJS Brokerage
17 & Co. v. Mahoney, 940 F.Supp. 784, 788-89 (E.D. Pa. 1996); Ali v. District of Columbia, 278 F.3d
18 1, 7 (D.C. Cir. 2002). Each defendant's contacts with the forum state must, therefore, be evaluated
19 individually. See, Rush v. Savchuk, 444 U.S. 320, 332 (1980). Accordingly, Plaintiff cannot
20 impute the contacts of the corporate entity, Blair LLC, to the individual Defendant Susan Carlson
21 for the purpose of establishing personal jurisdiction over this individual Defendant.
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23 The law generally recognizes two varieties of personal jurisdiction, general and specific.
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25 **General Jurisdiction**

1 A defendant is subject to general jurisdiction only where the defendant's contacts with a
2 forum are "substantial" or "continuous and systematic." Bancroft & Masters, Inc. v. Augusta Nat'l
3 Inc., 223 F.3d 1082, 1086 (9th Cir. 2000). The threshold for satisfying the requirements for general
4 jurisdiction is substantially greater than that for specific jurisdiction. The contacts with the forum
5 state must be of a sort that "approximate physical presence." Id., at 1086. "Factors to be taken into
6 consideration are whether the defendant makes sales, solicits or engages in business in the state,
7 serves the state's markets, designates an agent for service of process, holds a license, or is
8 incorporated there." Id. In applying the "substantial" or "continuous and systematic" contacts test,
9 the focus is primarily on two areas. First, there must be some kind of deliberate "presence" in the
10 forum state, including physical facilities, bank accounts, agents, registration, or incorporation. An
11 additional consideration is whether the defendant has engaged in active solicitation toward and
12 participation in the state's markets, i.e., the economic reality of the defendant's activities in the state.
13 Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 417 (1984); Gates Learjet Corp.
14 v. Jensen, 743 F.2d 1325, 1331 (9th Cir. 1984).

16 The Plaintiff has not shown that Ms. Carlson engaged in such continuous and systematic
17 contacts with the forum state as to amount to her maintaining a physical presence in Washington
18 State. See Easter v. American West Financial, 381 F.3d 948, 960 (9th Cir. 2004); Bancroft &
19 Masters, Inc. v. Augusta Nat'l, Inc., 223 F.3d 1082, 1086 (9th Cir. 2000).

20 **Specific Jurisdiction**

21 Specific jurisdiction applies if (1) the defendant has performed some act or consummated
22 some transaction within the forum state or otherwise purposefully availed himself of the privileges
23 of conducting activities in the forum, (2) the claim arises out of or results from the defendant's
24 forum-related activities, and (3) the exercise of jurisdiction is reasonable. Easter v. American West
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1 Financial, 381 F.3d 948, 960-61 (9th Cir. 2004); Bancroft & Masters, Inc. v. Augusta Nat'l Inc., 223
2 F.3d 1082, 1086 (9th Cir. 2000).

3 Under the first prong of our three-part specific jurisdiction test, Plaintiffs must establish that
4 Ms. Carlson either “purposefully availed” herself of the privilege of conducting activities in
5 Washington, or “purposefully directed” her activities toward Washington. See Schwarzenegger v.
6 Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004). A purposeful availment analysis is most
7 often used in suits sounding in contract, whereas a purposeful direction analysis, also termed the
8 “effects test,” is most often used in suits sounding in tort. Id.; Panavision Int'l, L.P. v. Toeppen, 141
9 F.3d 1316, 1321 (9th Cir. 1998); Core-Vent Corp. v. Nobel Indus. AB, 11 F.3d 1482, 1486 (9th Cir.
10 1993).

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12 In order to establish purposeful availment under the “effects test” the plaintiff must
13 demonstrate the existence of (1) intentional actions (2) expressly aimed at the forum state (3)
14 causing harm, the brunt of which is suffered, and which the defendant knows is likely to be
15 suffered, in the forum state. Panavision, at 1322; Core-Vent Corp., at 1486. A showing that a
16 defendant purposefully directed his conduct toward a forum state usually consists of evidence of the
17 defendant's actions outside the forum state that are directed at the forum, such as the distribution in
18 the forum state of goods originating elsewhere. Schwarzenegger, 374 F.3d at 803.

19 Plaintiffs contend that in regard to the tort claim of infliction of mental distress, Ms. Carlson
20 met the “effects test” by engaging in intentional acts that caused harm in Washington. Plaintiffs,
21 however, have not shown that Ms. Carlson engaged in conduct (communications) expressly aimed
22 at Washington or the brunt of which was known to likely be suffered in Washington. See, Casualty
23 Assur. Risk Ins. Brokerage Co. v. Dillon, 976 F.2d 596 (9th Cir. 1992). Plaintiffs merely allege the
24 existence of communications that took place between Plaintiffs and Susan Carlson, as an employee
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1 for Blair. During one of these conversation, Ms. Carlson allegedly advised Plaintiffs that the robes
2 would not be taken off the market and would continue to be sold. This allegation is void of facts
3 sufficient to support a finding that through these words Ms. Carlson acted knowingly or
4 intentionally to commit a tort, or acted with intent to do harm to a resident of Washington. Thus,
5 Plaintiffs have failed to establish the first prong of the specific jurisdiction test.

6 With respect to the second element of specific jurisdiction, the Court must consider whether
7 Plaintiffs' claims arise out of Ms. Carlson's contacts with Washington. Under prevailing Ninth
8 Circuit law, a claim arises out of a defendant's contacts when the claim would not have arisen 'but
9 for' defendant's actions in the forum. Panavision Int'l v. Toeppen, 141 F.3d 1316, 1322 (9th Cir.
10 1998). The 'but-for' test is presumably met: but for the communications with Plaintiffs in the
11 Washington forum, the claim embodied in the complaint would not exist.

12 The third and final prong of the specific jurisdiction test is whether exercising personal
13 jurisdiction over the nonresident defendant is reasonable, as an unreasonable exercise of personal
14 jurisdiction would violate due process. Ziegler v. Indian River County, 64 F.3d 470, 474-75 (9th
15 Cir. 1995). The reasonableness requirement may defeat local jurisdiction even if the defendant has
16 purposefully engaged in forum related activities. Burger King Corp. v. Rudzewicz, 471 U.S. 462,
17 474, 477-78 (1985). The Ninth Circuit considers seven factors to determine whether the exercise of
18 specific jurisdiction is reasonable: (1) the extent of the defendant's purposeful contacts with the
19 state; (2) the burden on the defendant of litigating in the forum state; (3) the extent of conflict with
20 the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the dispute; (5)
21 the most efficient judicial resolution of the controversy; (6) the importance of the forum to the
22 plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum.
23 Ziegler, at 475.

1 Given that Plaintiffs have failed to establish the first prong of the purposeful availment
2 requirement for exercising specific jurisdiction, it is unnecessary to analyze the reasonableness
3 prong of the jurisdictional test. However, looking at these factors, it is clear that given the minimal
4 contact that occurred between Ms. Carlson and the forum state, justice would not favor the exercise
5 of jurisdiction on these set of facts.

6 First, Ms. Carlson's contacts with Washington are minimal. These contacts are limited to
7 three telephone conversations and two letters relating to defendant's job function as a customer
8 service representative. This factor weighs heavily in Defendant's favor. See, Insurance Co. of
9 North America v. Marina Salina Cruz, 649 F.2d 1266, 1271 (9th Cir. 1981).

10 Second, the Court considers the burden on Defendant Carlson of litigating in Washington.
11 The Defendant is employed in Pennsylvania and has no contacts with Washington, other than
12 fielding the Plaintiffs' customer complaint. Ms. Carlson would be burdened by litigating in
13 Washington. This factor weighs in Defendant's favor.

14 Third, the Court considers any conflict with the sovereignty of Pennsylvania. Because the
15 alternative forums are within the United States, "any conflicting sovereignty interests are best
16 accommodated through choice-of-law rules rather than jurisdictional rules." Gray & Co. v.
17 Firstenberg Mach. Co., 913 F.2d 758, 761 (9th Cir. 1990). Accordingly, this factor does not favor
18 either party.

19 Fourth, Washington's interest in the dispute is considered. Washington maintains a strong
20 interest in providing an effective means of redress for its residents who are tortuously injured. See,
21 Data Disc, Inc. v. Sys. Tech. Assocs., 557 F.2d 1280, 1288 (9th Cir. 1977). This factor favors the
22 Plaintiffs.

23 Fifth, the Court must evaluate the most efficient judicial resolution. Courts evaluate judicial
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1 efficiency by looking to “where the witnesses and the evidence are likely to be located.” Terracom
2 v. Valley Nat'l Bank, 49 F.3d 555, 561 (9th Cir. 1995). Here, the evidence concerns telephone
3 conversations and correspondence occurring between Pennsylvania and Washington. This factor
4 favors neither party.

5 Sixth, the importance of Washington as the Plaintiffs forum rests solely on their residence in
6 the forum state and its convenience as their forum of choice. This factor weighs slightly in
7 Plaintiffs’ favor.

8 Seven, the Plaintiffs bear the burden of proving the unavailability of an alternative forum.
9 Plaintiffs have not met this burden. This factor therefore weighs in Defendant’s favor.

10 The majority of these factors favor Defendant. Exercising specific jurisdiction over Ms.
11 Carlson for conduct occurring in conversation over the phone as a customer service representative
12 of Defendant Blair LLC would be unreasonable under the Due Process Clause. Plaintiff has failed
13 to satisfy the third prong of the specific jurisdiction analysis.

14 **Jurisdictional Discovery**

15 Plaintiff asserts that further discovery may provide that Ms. Carlson may have engaged in
16 conduct which would render her subject to the “general jurisdiction” of this Court.

17 Jurisdictional discovery may be appropriately granted where pertinent facts bearing on the
18 question of jurisdiction are controverted or where a more satisfactory showing of the facts is
19 necessary. Boschetto v. Hansing, 539 F.3d 1011, 1020 (9th Cir. 2008). However, the mere
20 allegation that Plaintiffs believe discovery will enable them to demonstrate sufficient Washington
21 business contacts to establish the Court's personal jurisdiction is insufficient to warrant additional
22 discovery. Id; Butcher's Union Local No. 498 v. SDC Inv., Inc., 788 F.2d 535, 540 (9th Cir. 1986)
23 Given the nature of the claim and the facts of this case, Plaintiffs have failed to demonstrate how
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1 further discovery would allow Plaintiffs to contradict the undisputed fact of minimal contacts with
2 the forum state. See Terracom v. Valley Nat. Bank, 49 F.3d 555, 562 (9th Cir. 1995). The Court
3 concludes that additional jurisdictional discovery is unwarranted.

4 **Conclusion**

5 For the reasons set forth above, the Plaintiffs have failed to satisfy the elements that would
6 support the exercise of personal jurisdiction over Susan Carlson as an individual Defendant. The
7 Court accordingly will grant Defendant Susan Carlson's motion to dismiss for lack of personal
8 jurisdiction.

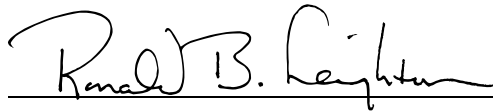
9 ACCORDINGLY;

10 IT IS ORDERED:

11 Defendant Susan Carlson's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2)

12 [Dkt. # 24] is **GRANTED**.

13 DATED this 26th day of April, 2010.

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16 RONALD B. LEIGHTON
17 UNITED STATES DISTRICT JUDGE
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